

EDUCATION

STATE BOARD OF EDUCATION

Special Adopted Amendments: N.J.A.C. 6A:26-1.2 and 12.4

Testing for Lead in Drinking Water for All Educational Facilities

Adopted: July 13, 2016, by the New Jersey State Board of Education, David C. Hespe, Secretary, Commissioner, Department of Education.

Filed: July 13, 2016, as R.2016 d.093.

Authority: P.L. 2016, c. 10.

Effective Date: July 13, 2016.

Expiration Date: June 30, 2017.

Take notice that the State Board of Education promulgated amendments to N.J.A.C. 6A:26-1.2 and 12.4 to require immediate testing for lead in the drinking water of all New Jersey public school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a) (hereinafter collectively referred to as “districts”).

The health, safety, and welfare of the children in the State are of utmost importance to the Department of Education (Department). The potential exposure to lead-contaminated drinking water poses serious health problems, particularly for children, as well as for teachers and school personnel. As the risk of lead contamination can come from pipe and plumbing fixtures in educational facilities, in addition to the public water supplier (which has independent testing requirements), the Department is proposing a drinking water testing program be immediately insti-

tuted at all drinking water outlets and food preparation sources in all public education facilities in the State.

These specially adopted amendments require districts to sample and analyze all drinking water in its educational facilities for elevated lead levels within 365 days of the effective date of these rules, July 13, 2017. The testing is to be done in accordance with a lead sampling plan developed by school districts in accordance with the requirements of these amendments and based on guidance to be developed by the Department, in consultation with the Department of Environmental Protection (DEP). The guidance documents will assist districts to develop a lead sampling plan and comply with the sampling and analysis requirements of Subchapter 12. Each district will annually submit to the Department a statement of assurance that it is compliant with the requirements of Subchapter 12.

These rules also require all districts to immediately make publicly available, the results of all testing conducted at both the school facility and on the district's website, if applicable. Districts are also required to notify parents or guardians of school children attending the facility and the Department of elevated lead levels, the measures taken to immediately end use of each drinking water outlet exhibiting elevated lead levels, and the remedial actions taken to provide alternate sources of drinking water.

Districts are required to conduct lead testing of all drinking water outlets at least every six years following the initial testing to ensure districts continue to monitor and assess the quality of the drinking water in their buildings and to ensure the health, safety, and welfare of the children throughout the State.

These amendments allow for exemptions from testing in limited circumstances. A district may seek an exemption from the initial testing requirement if they can demonstrate that it

complied with or exceeded the testing requirements of Subchapter 12 within five years prior to the effective date of these rules, July 13, 2011. A district exempt from the initial testing still must conduct follow-up testing in accordance with the rules. A district may also seek an exemption from testing if the district can demonstrate that it does not use any drinking water outlets for consumption or food preparation in any of their facilities. The rules require a district receiving an exemption under this subsection to either begin testing within six years of receiving the exemption or seek another exemption.

Finally, these amendments allow districts to apply for reimbursement for the costs of any water supply testing and analysis conducted after the effective date of these rules, July 13, 2016. All districts seeking reimbursement shall submit a reimbursement application located on the Department's website. Any nonpublic school choosing to conduct a water testing program in accordance with these amendments may also submit a reimbursement application to the Department, approval of which will be subject to available funds after review and approval of all other reimbursement applications.

Full text of the special adopted amendments follows (additions indicate in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

6A:26-1.2 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise:

...

“Certified laboratory” means a laboratory certified pursuant to the provisions of N.J.A.C.

7:18.

...

“Drinking water outlet” means any location at a school facility, other facility, or temporary facility, as those terms are defined in this section, where water is expected to be used for consumption or food preparation.

...

“Lead action level” means the lead action level established by the United States Environmental Protection Agency at 40 CFR 141.80 for lead in drinking water.

...

SUBCHAPTER 12. SAFETY REQUIREMENTS FOR SCHOOL FACILITIES

6A:26-12.4 Safe drinking water

(a) The rules in this subchapter for the provision of safe drinking water shall apply to all New Jersey public school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a). Throughout this subchapter, “district board of education” refers to the governing authority for all of the entities identified in this subsection, unless otherwise indicated.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

(d) All district boards of education shall conduct lead sampling and analysis, as described in (d)1 and 2 below, in all drinking water outlets to which a student or staff member has or may have access, in each school facility, other facility, or temporary facility, as those terms

are defined in this chapter, as soon as practicable, but no later than July 13, 2017. District boards of education may apply to the Department for an extension of this deadline of up to one year, upon written demonstration that there is no certified laboratory available to conduct testing by July 13, 2017. The extension request shall include evidence that the district board of education requested testing from at least three certified laboratories and the responses from the laboratories showing that the testing could not be completed within the designated time period.

1. Sampling shall be conducted in accordance with a lead sampling plan, which shall include:

i. A plumbing survey for each facility that identifies how water enters and flows through each facility, the types of plumbing materials used in the facility, such as the service line, piping, solder, fixtures, drinking water outlets where students or staff have or may have access, and point of use treatment, such as drinking water filters;

ii. The names and responsibilities of all individuals involved in sampling;
and

iii. The following sampling procedures:

(1) Samples shall be taken after water has sat, undisturbed in the school pipes for at least eight hours but no more than 48 hours before the sample is taken;

(2) At least eight hours prior to sampling, signs shall be posted to indicate that water shall not be used and access to the buildings subject to the sampling shall be restricted to all but authorized staff members;

(3) Existing aerators, screens, and filters shall not be replaced or removed prior to or during sampling; and

(4) All samples shall be collected in pre-cleaned high-density polyethylene (HDPE) 250 milliliter (mL) wide-mouth single-use rigid sample containers that are properly labeled.

2. Analysis of samples shall be conducted as follows:

i. Analysis shall be conducted by a certified laboratory to analyze for lead in drinking water;

ii. The laboratory shall use an approved analytical method pursuant to the Federal Safe Drinking Water Act at 40 CFR 141.23(k)(1); and

iii. Sample analysis shall be conducted in accordance with a Quality Assurance Project Plan (QAPP), which shall be signed by the district board of education, the certified laboratory, and the individual responsible for conducting sampling. The QAPP shall include the identification of analytical methods, chain of custody procedures, data validation and reporting processes, detection limits, reporting to three significant figures, field blanks, and quality control measures required by the certified method.

3. The Department, in consultation with the Department of Environmental Protection (DEP), will develop a technical guidance manual to assist district boards of education in complying with the sampling and analysis requirements of this subchapter.

(e) Within 24 hours after the district board of education has reviewed and verified the final laboratory results, the district board of education shall:

1. Make the test results of all water samples publicly available at the school facility and on the district board of education's website; and

2. If any results exceed the permissible lead action level, provide written notification to the parents/guardians of all students attending the facility, as well as to the De-

partment. This notification shall include a description of the measures taken by the district board of education to immediately end use of each drinking water outlet where water quality exceeds the permissible lead action level, the measures taken to ensure that alternate drinking water has been made available to all students and staff members, and information regarding the health effects of lead.

(f) Notwithstanding the results of any prior testing, all district boards of education shall continue to test drinking water outlets as provided below:

1. Within six years following the initial testing set forth in (d) above and every six years thereafter, all district boards of education shall test all drinking water outlets. Sampling shall be prioritized, such that buildings and facilities that previously had outlets with results above the action level or identified in the plumbing profile as high risk for lead shall be sampled first in accordance with the sampling plan; and

2. All district boards of education shall sample for lead after the replacement of any drinking water outlet or any other alteration to plumbing or service lines that may impact lead levels at the outlet.

(g) All district boards of education shall submit to the Department on an annual basis a statement of assurance that lead testing was completed in accordance with this subchapter, that notifications were provided consistent with this subchapter, and that alternate drinking water continues to be made available to all students and staff.

(h) A district board of education may apply to the Department for an exemption from the initial testing if the district board of education can demonstrate that it complied with or exceeded the testing requirements set forth in (d) above, including any required public notifications, by July 13, 2011. The district board of education shall provide to the Depart-

ment information regarding the testing activities conducted, including the lead sampling plan and an analysis of the samples taken. A district board of education that receives an exemption from the Department from initial testing pursuant to this subsection shall make available for public inspection at the school facility and on the district board of education's website, if applicable, the results of any prior testing and shall conduct testing within six years of the prior testing in accordance with (f) above.

(i) District boards of education may request an exemption from the testing requirements set forth in (d) above if they can demonstrate that they do not use any drinking water outlets for consumption or food preparation in any of their facilities. District boards of education seeking an exemption pursuant to this provision shall submit an application to the Department documenting that no drinking water outlets are used in their facilities and the provisions for an alternative source of drinking water. A district board of education that receives an exemption from the Department from testing pursuant to this subsection shall make available for public inspection at the school facility and on the district board of education's website, if applicable, confirmation that the district board of education is exempt from testing. Within six years of receiving an exemption pursuant to this subsection, a district board of education shall either begin testing procedures in accordance with (f) above or reapply for an exemption under this subsection.

(j) All district boards of education are eligible to be reimbursed for the water supply testing and analysis conducted pursuant to (d) above after July 13, 2016. To receive reimbursement, the district board of education shall complete and submit to the Department a reimbursement application on a form or in a format supplied by the Department. The Department will make the reimbursement application available on its website. Nonpublic

schools choosing to conduct testing in accordance with (d) above may submit a reimbursement application to the Department, approval of which is subject to available funds.